IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

RCRev..No. 345 of 2007

RCA.91/2005 of VI ADDL.DISTRICT COURT, ERNAKULAM
RCP.131/2004 of III ADDL.M.C.EKM (RENT CONTROL)
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REVISION PETITIONERS/APPELLANTS/RESPONDENTS 1 & 2:

1. HARI, S/O. CHENNANKUTTY, AGED 34 YEARS,
   C.C.42/1080, MATHAI MANJOORAN ROAD,
   NEAR HINDUSTAN LEVER, KOCHI-14.

2. LAL, CHENNANKUTTY, AGED 36 YEARS, DO. DO.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

RESPONDENTS/RESPONDENTS/PETITIONER/RESPONDENTS 3 & 4:

1. M.B. SHYAMKUMAR, S/O. BABU, AGED 32,
   MATTAKKATHARA HOUSE, M.M.ROAD,
   KOCHI-14.

2. BABY, S/O. CHENNANKUTTY, AGED 37 YEARS,
   C.C.32/1080, MATHAI MANJOORAN ROAD,
   NEAR HINDUSTAN LEVER, KOCHI-14.

3. BABU, S/O. CHENNANKUTTY, AGED 43, DO. DO.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 345 of 2007

ORDER

Balakrishnan Nair, J.

The tenants are the revision petitioners. The petitioners and respondents 2 and 3 are the legal heirs of the original tenant. The first respondent is the landlord.

2. The landlord claimed eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') of the tenanted premises, where the petitioners are running a hotel. The landlord claimed that he is unemployed. So, he wants to start an Engineering Workshop in the tenanted premises. He has got the requisite experience to do that and he is qualified also. According to him, the main source of income of the tenants is not

from the business run in the tenanted premises. There are other buildings available in the locality to shift their business. The tenants resisted the application contending that the landlord is running a Cool Bar near the petition schedule building. So, he has got his own avocation and income. Therefore, the need projected is only a ruse to evict the tenants and there is no bona fides in the claim, it is submitted.

3. Before the Rent Controller, from the side of the petitioners, PWs 1 and 2 were examined and Exhibits A1 to A6 were marked. From the side of respondents 1 and 2, RWs 1 and 2 were examined. Exhibit X1 file was produced on the motion made by the tenants. The Rent Controller, after considering the evidence on record, allowed the application under Section 11(3) of the Act. Out of the respondents before the Rent Controller, two, who were actually running the business, appealed. The appeal was dismissed, affirming the finding of

the Rent Controller. Hence, this revision.

4. The learned counsel for the revision petitioners submitted that there is evidence on record to show that the first respondent/landlord has availed of a loan under the PMRY Scheme from a Bank for running a Cool Bar in the room adjacent to the tenanted premises. The Bank Manager was examined as a witness and Exhibit X1 file regarding the said loan transaction was also produced. As per the Bank Manager, the landlord has applied for a loan for running a Cool Bar and the same was sanctioned under the PMRY Scheme. The landlord explained the said circumstance against him by saying that his mother was running the shop. He availed of the loan only to help his mother in her business. She was being assisted by him and his father, in running the shop. The necessary D&O license from the local authority is also in the name of his mother. He has also produced a photocopy of the receipt issued by the local

authority in support of the said submission. The Rent Controller did not act upon the said document, as it was only a photocopy. If that is eschewed from consideration, the learned counsel for the respondents submitted that there was no evidence to show that his mother was running the Cool Bar. Exhibit X1 file and the deposition of the Bank Manager, who was examined as RW1, will prove that the landlord is running a Cool Bar in the neighbouring room. Therefore, his claim for eviction of the tenanted premises to run a workshop and earn his livelihood is untenable, it is submitted.

5. The appellate authority considered the above point and accepted the explanation of the landlord. The landlord explained that he has availed of a loan for purchasing certain materials for running the Cool Bar. In fact, his mother is running the shop and the D&O license is also in her name. The said version of the landlord was accepted by the

appellate authority. Further, the appellate authority observed that once the landlord has prima facie discharged his burden by showing that the business is run by his mother, the tenants should have adduced evidence to disprove the said case. Since the tenants have not produced any evidence on that point, the explanation of the landlord that he is not running the business has been accepted. The learned counsel submits that the burden has been wrongly shifted to the side of the tenants. Since the landlord's claim for the room was founded on the premise that he is unemployed, it was for the landlord to prove that he was not running the shop, it is submitted.

6. The learned counsel for the revision petitioners also relied on the decision of this Court in **Kurien v. Prathapan** (1992 (2) KLT 428). The learned counsel made special reference to paragraph 12 of the order, wherein it was stated that the bona fides, which is a condition of mind,

may not be capable of being proved by direct evidence and therefore, the same is a matter for interference from the circumstances. Going by the circumstances revealed in the case, the learned counsel submitted that the need urged can never be treated as bona fide.

7. It is true that the loan was availed of for running a Cool Bar in the name of the landlord. But, he has explained that it is only for helping his mother. As per the scheme, the loan should be availed of by an unemployed person. In fact, it was meant for his mother's business and it was utilised for the same, it was claimed. Though this is an area, where two views are possible, we notice that the view taken by the authorities below is a plausible view on the facts of the case. It cannot be described as a perverse view. The assistance rendered by him to his mother cannot be taken as an employment to him. Further, we notice that even if the landlord is not unemployed and is affluent,

still, he can decide to start an Engineering Workshop. So, even if his contention regarding unemployment is incorrect, it will only cast a shadow on the version of the landlord. But, still he is entitled to get the room vacated for running an Engineering workshop, having regard to the evidence tendered by him, concerning his competency and experience to run an Engineering Workshop and also the project report produced by him, which give the details regarding the workshop to be established. In view of the above facts, we are of the view that the view taken by the authorities below is not illegal, improper or irregular, warranting interference by this Court under Section 20 of the Act.

In the result, the revision fails and it is dismissed. The learned counsel for the petitioners prayed for some time to vacate the premises. Having regard to the facts of the case, the petitioners are given three months' time to vacate

the premises, on condition that they file an unconditional undertaking before the execution court in the form of an affidavit undertaking to vacate the premises within three months from today. The affidavit in this regard shall be filed before the execution court within three weeks from today. If any arrears of rent are remaining unpaid, the same shall be cleared within one month from today. The rent due from time to time shall also be paid till the premises are vacated.

(K.Balakrishnan Nair, Judge)

19th November, 2007

(K.P.Balachandran, Judge)

tkv